

1 Hon. Robert S. Lasnik
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 LOIS HILL DESIGNS, LLC, a Delaware
11 Limited Liability Company,

12 Plaintiff,

13 v.

14 UNIQUE DESIGNS, INC., a New York
15 Corporation,

16 Defendant.

No. 2:20-cv-01403-RSL

ANSWER AND COUNTERCLAIM

17
18 By and through its undersigned counsel, Defendant Unique Designs, Inc. (“Unique
19 Designs”) answers plaintiff Lois Hill Designs, LLC’s (“LHD”) Second Amended
20 Complaint (Dkt. No. 15) and counterclaims as follows.

21 **ANSWER**

22 1.1. Unique Designs lacks sufficient knowledge to admit or deny the allegations
23 in Paragraph 1.1, and therefore denies them.

24 1.2. Unique Designs admits that it is a New York corporation. Unique Designs
25 denies the remaining allegations in Paragraph 1.2.

1 2.1. The allegations in Paragraph 2.1 are legal conclusions to which no response
2 is required and are therefore denied.

3 2.2. The allegations in Paragraph 2.2 are legal conclusions to which no response
4 is required and are therefore denied.

5 2.3. Unique Designs admits that a Unique Designs salesperson negotiated an
6 agreement in Washington State. The remaining allegations in Paragraph 2.3 are denied.

7 2.4. Unique Designs admits that it has done business with LHD, Blue Nile, and
8 Nordstrom. The remaining allegations in Paragraph 2.4 are denied.

9 2.5. Admitted.

10 2.6. Unique Designs admits that it sells to Washington-based retailers on a
11 wholesale basis and to online retailers who sell to customers in various states, including
12 Washington State. The remaining allegations in Paragraph 2.6 are denied.

13 2.7. The allegations in Paragraph 2.7 are legal conclusions to which no response
14 is required and are therefore denied.

15 2.8. The allegations in Paragraph 2.8 are legal conclusions to which no response
16 is required and are therefore denied.

17 3.1. Unique Designs lacks sufficient knowledge to admit or deny the allegations
18 in Paragraph 3.1, and therefore denies them.

19 3.2. Unique Designs lacks sufficient knowledge to admit or deny the allegations
20 in Paragraph 3.2, and therefore denies them.

21 3.3. Unique Designs lacks sufficient knowledge to admit or deny the allegations
22 in Paragraph 3.3, and therefore denies them.

23 3.4. Admitted.

24 3.5. Admitted.

25 3.6. Admitted.

1 3.7. Answering Paragraph 3.7, the Agreement speaks for itself. Except as
2 expressly admitted, the allegations in Paragraph 3.7 are denied.

3 3.8. Answering Paragraph 3.8, the Agreement speaks for itself. Except as
4 expressly admitted, the allegations in Paragraph 3.8 are denied.

5 3.9. Answering Paragraph 3.9, the Agreement speaks for itself. Except as
6 expressly admitted, the allegations in Paragraph 3.9 are denied.

7 3.10. Answering Paragraph 3.10, the Agreement speaks for itself. Except as
8 expressly admitted, the allegations in Paragraph 3.10 are denied.

9 3.11. Answering Paragraph 3.11, the Agreement speaks for itself. Except as
10 expressly admitted, the allegations in Paragraph 3.11 are denied.

11 3.12. Unique Designs admits that the Agreement provided that sterling silver
12 products would be purchased from P.T. Laksmi. However, the Agreement further provided
13 that Unique Designs could use alternate producers upon LHD's approval. Except as
14 expressly admitted, the allegations in Paragraph 3.12 are denied.

15 3.13. Unique Designs admits that the Agreement provided that diamond products
16 would be purchased from Fineline. However, the Agreement further provided that Unique
17 Designs could use alternate producers upon LHD's approval. Except as expressly admitted,
18 the allegations in Paragraph 3.13 are denied.

19 3.14. Admitted.

20 3.15. Unique Designs admits that the Agreement stated that "Total \$275,000 of
21 product will be purchased before Aug. 31, 2019" and that "Yearly minimum of \$1,300,000
22 shall be effective from August 1, 2019 through August 31, 2020." Except as expressly
23 admitted, the allegations in Paragraph 3.15 are denied.

24 3.16. Denied.

25 3.17. Unique Designs admits that the Agreement stated that "Yearly minimum of
26 \$1,300,000 shall be effective from August 1, 2019 through August 31, 2020, with a

1 minimum monthly payment of \$100,000 per month, payable on the 20th day of the previous
2 month.” Except as expressly admitted, the allegations in Paragraph 3.17 are denied.

3 3.18. Answering Paragraph 3.18, the Agreement speaks for itself. Except as
4 expressly admitted, the allegations in Paragraph 3.18 are denied.

5 3.19. Denied.

6 3.20. Denied.

7 3.21. Denied.

8 3.22. Denied.

9 3.23. Denied.

10 3.24. Denied.

11 3.25. Denied.

12 3.26. Denied.

13 3.27. Denied.

14 3.28. Denied.

15 3.29. Denied.

16 3.30. Denied.

17 3.31. Denied.

18 3.32. Denied.

19 3.33. Unique Designs admits that in May of 2020 the parties were in negotiations
20 to resolve disputes between them. Unique Designs denies that both parties were
21 represented by counsel at the outset of those negotiations.

22 3.34. Unique Designs lacks sufficient knowledge to admit or deny the allegations
23 that “Counsel for LH Designs reviewed a draft settlement agreement and provided
24 substantive revisions and comments in redline form,” and therefore denies them. The
25 remaining allegations in Paragraph 3.34 are denied.

26 3.35. Denied.

3.36. Unique Designs admits that the Starboard order was not timely shipped. Except as expressly admitted, the allegations in Paragraph 3.36 are denied.

3.37. Unique Designs admits that it made a \$100,000 payment to LHD. Except as expressly admitted, the allegations in Paragraph 3.37 are denied.

3.38. Denied.

3.39. Admitted.

FIRST CLAIM – BREACH OF CONTRACT

4.1. Unique Designs restates and incorporates by reference its responses to Paragraphs 1.1 through 3.39 as though fully set forth herein.

4.2. The allegations in Paragraph 4.2 are legal conclusions to which no response is required and are therefore denied.

4.3. Denied.

4.4. Denied.

4.5. Denied.

SECOND CLAIM – BREACH OF IMPLIED

COVENANT OF GOOD FAITH AND FAIR DEALING

5.1. Unique Designs restates and incorporates by reference its responses to Paragraphs 1.1 through 4.5 as though fully set forth herein.

5.2. The allegations in Paragraph 5.2 are legal conclusions to which no response is required and are therefore denied.

5.3. Denied.

5.4. Denied.

THIRD CLAIM – DECLARATORY JUDGMENT

6.1. Unique Designs restates and incorporates by reference its responses to Paragraphs 1.1 through 5.4 as though fully set forth herein.

6.2. The allegations in Paragraph 6.2 are legal conclusions to which no response is required and are therefore denied.

6.3. Denied.

6.4. The allegations in Paragraph 6.4 are legal conclusions to which no response is required and are therefore denied.

6.5. Denied.

6.6. Denied.

LHD'S PRAYER

Unique Designs denies that LHD should take anything by way of its Second Amended Complaint and prays that this Court dismiss LHD's Second Amended Complaint in its entirety, enter judgment in favor of Unique Designs on all claims thereof, award Unique Designs its costs of defense and reasonable attorneys' fees, and enter such other and further relief as this Court deems just, fair, and equitable.

ADDITIONAL DEFENSES

1. LHD's Second Amended Complaint is barred by the doctrine of estoppel.
2. LHD's Second Amended Complaint is barred by the doctrine of unclean hands.

3. LHD's Second Amended Complaint is barred because the damages sustained by LHD, if any, were caused by the actions of another for whose conduct Unique Designs is not responsible.

4. LHD's damages, if any, must be reduced or eliminated by the doctrine of offset.

5. LHD's damages, if any, must be reduced or eliminated due to LHD's failure to mitigate.

6. LHD's Second Amended Complaint is barred by LHD's own breach of the Agreement.

7. LHD's Second Amended Complaint is barred by LHD's prevention and frustration of Unique Designs' performance.

8. LHD's Second Amended Complaint is barred by novation.

9. LHD's Second Amended Complaint is barred by release.

COUNTERCLAIMS

PARTIES

1. Unique Designs is a New York corporation with its principal place of business in Secaucus, New Jersey.

2. On information and belief, LHD is a limited liability company organized under the laws of Delaware with its principal place of business in Washington State.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

4. This Court has personal jurisdiction over LHD because LHD has availed itself of this Court by asserting its Second Amended Complaint against Unique Designs and because, on information and belief, LHD is a citizen of Washington State.

5. Venue is proper under 28 U.S.C. § 1391(b) because LHD is a resident of this judicial district, because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington, and because LHD has asserted its Second Amended Complaint against Unique Designs in this Court.

FACTS

6. Unique Designs is a fine jewelry manufacturer and wholesaler, providing quality jewelry to retailers across the United States.

1 7. LHD sought out Unique Designs due to Unique Designs' robust
 2 relationships with retailers throughout the United States, including but not limited to Stein
 3 Mart, Macy's, and QVC.

4 8. On or about February 1, 2019, Unique Designs and LHD entered the
 5 "Limited Licensing Agreement" (the "Agreement").

6 9. LHD committed to Unique Designs that it would provide goods under the
 7 Agreement at market rates.

8 10. On information and belief, LHD or its members own or have a controlling
 9 interest in P.T. Laksmi Hartika Deva Bali ("Laksmi").

10 11. Unique Designs obtained a quote from a jewelry manufacturer in Thailand
 11 for the jewelry that Laksmi was producing for Unique Designs. Despite LHD's
 12 commitment that it would provide goods at market rates, the quote Unique Designs
 13 obtained from the jewelry manufacturer in Thailand revealed that Laksmi was charging
 14 prices substantially above the market rate for comparable goods.

15 12. Through multiple salespeople, Unique Designs diligently pursued orders
 16 from its customers for LHD products.

17 13. Lois Hill, LHD's CEO and one of its members, sent multiple messages and
 18 placed multiple telephone calls to Unique Designs' customers' buyers. In those messages
 19 and telephone calls, Ms. Hill harassed and pressured Unique Designs' customers to place
 20 orders for LHD products.

21 14. Unique Designs placed orders for LHD products in the amounts requested by
 22 its customers. LHD was unable to secure \$275,000 in orders by August 31, 2019, because
 23 LHD was unable to deliver orders on Unique Designs' customers' desired schedules.

24 15. In or about August or September of 2019, LHD threatened to refuse to
 25 provide goods in exchange for funds already transferred to LHD for Unique Designs having

1 not secured \$275,000 in orders. LHD demanded additional funds and orders to continue
 2 performing under the Agreement.

3 16. LHD consistently failed to deliver orders on the schedules requested by
 4 Unique Designs' customers, which lead to a lower volume of orders and commitments to
 5 order, cancellations of orders, and assessment of penalties on Unique Designs by Unique
 6 Designs' customers.

7 17. In violation of the Agreement, LHD demanded that Unique Designs pay
 8 royalties on goods that had been provided to Unique Designs' customers on consignment
 9 and that had not yet been sold. LHD threatened to terminate the Agreement if Unique
 10 Designs refused to accede to this demand.

11 18. In or around April of 2020, LHD attempted to circumvent Unique Designs'
 12 relationship with QVC by attempting to secure additional orders and larger orders without
 13 consulting with or including Unique Designs.

14 19. In or around April of 2020, LHD attempted to terminate the Agreement so
 15 that it could do business directly with QVC, which would take advantage of Unique
 16 Designs' relationship with QVC, interfere with Unique Designs' relationship with QVC,
 17 and deprive Unique Designs of profits for orders QVC would place.

18 20. In or around April of 2020, LHD threatened to file a lawsuit against Unique
 19 Designs if Unique Designs did not agree to terminate the Agreement. LHD provided a draft
 20 complaint against Unique Designs.

21 21. On or about May 1, 2020, LHD filed a Complaint against Unique Designs in
 22 King County Superior Court.

23 22. In May of 2020, Unique Designs and LHD negotiated and entered a
 24 Settlement and Release Agreement (the "Settlement Agreement"). The Settlement
 25 Agreement contained a "general release in the broadest form." Further, under the
 26

1 Settlement Agreement LHD was required to dismiss its lawsuit against Unique Designs
2 with prejudice within five days of execution of the Settlement Agreement.

3 23. The Settlement Agreement extinguished the rights and obligations under the
4 Agreement. The Settlement Agreement extinguished the claims LHD asserts against
5 Unique Designs in this lawsuit.

6 24. Despite that the Settlement Agreement required LHD to dismiss its lawsuit
7 against Unique Designs with prejudice within five days of execution of the Settlement
8 Agreement, LHD failed to dismiss the lawsuit.

9 25. LHD denies the Settlement Agreement extinguished the rights, obligations,
10 and claims under the Agreement. LHD denies the Settlement Agreement is a valid and
11 enforceable contract.

12 26. Unique Designs has suffered harm from LHD's failure to comply with the
13 Settlement Agreement and dismiss LHD's lawsuit against Unique Designs with prejudice.
14 That harm includes attorneys' fees and other costs and expenses relating to this lawsuit.

15 **FIRST CLAIM**

16 **(Declaratory Judgment)**

17 27. Unique Designs re-alleges and incorporates by this reference all allegations
18 in the preceding paragraphs.

19 28. Under the Declaratory Judgment Act, this Court "may declare the rights and
20 other legal relations of any interested party seeking such declaration, whether or not further
21 relief is or could be sought." 28 U.S.C. § 2201(a).

22 29. There is an actual controversy between Unique Designs and LHD regarding
23 whether the Settlement Agreement is an enforceable contract and whether it extinguished
24 the rights, obligations, and claims under the Agreement.

25 30. Unique Designs is entitled to attorney's fees and costs under Paragraph 10 of
26 the Settlement Agreement.

31. Unique Designs is entitled to a declaratory judgment that the Settlement Agreement is an enforceable contract and that it extinguished the rights, obligations, and claims under the Agreement.

SECOND CLAIM

(Breach of the Settlement Agreement)

32. Unique Designs re-alleges and incorporates by this reference all allegations in the preceding paragraphs.

32. The Settlement Agreement is a valid contract between Unique Designs, on one hand, and LHD, on the other.

33. The Settlement Agreement imposed a duty on LHD to dismiss its lawsuit against Unique Designs with prejudice within five days of execution of the Settlement Agreement.

34. LHD breached its duty to dismiss its lawsuit against Unique Designs within five days of execution of the Settlement Agreement.

35. Unique Designs has suffered damage as a result of LHD's breach of the Settlement Agreement.

36. Unique Designs is entitled to attorney's fees and costs under Paragraph 10 of the Settlement Agreement.

THIRD CLAIM

(Breach of the Agreement)

37. Unique Designs re-alleges and incorporates by this reference all allegations in Paragraphs 1 to 26 of its Counterclaim. Unique Designs pleads this counterclaim in the alternative to its first and second counterclaims.

38. The Agreement is a valid contract between Unique Designs, on one hand, and LHD, on the other.

39. The Agreement and the parties' course of dealing imposed duties on LHD to fulfill orders in a timely fashion, to obtain production of orders when needed, to timely approve marketing materials, and to cooperate with Unique Designs in producing displays for merchandise.

40. LHD breached the Agreement by failing to fulfill orders in a timely fashion, by refusing to produce orders when needed, by unreasonably withholding approval of marketing materials, by failing to cooperate with Unique Designs in producing displays for merchandise, and by demanding payment of royalties before royalty payments were due.

41. Unique Designs has suffered damage as a result of LHD's breach of the Agreement.

FOURTH CLAIM

(Breach of Implied Covenant of Good Faith and Fair Dealing)

42. Unique Designs re-alleges and incorporates by this reference all allegations in Paragraphs 1 to 26 of its Counterclaim. Unique Designs pleads this counterclaim in the alternative to its first and second counterclaims.

43. LHD owes Unique Designs an implied duty of good faith and fair dealing in LHD's performance under the Agreement.

44. LHD breached this implied duty by, at a minimum, (a) entering into the Agreement without any intention to perform its terms and conditions, (b) delaying production and shipment of orders to cause hardship to Unique Designs, (c) harassing Unique Designs' customers and their representatives by messages, and phone calls, (d) threatening to withhold orders, (e) threatening to refuse to honor credits for funds already paid to LHD to attempt to manipulate and force Unique Designs to place additional orders, and (f) damaging Unique Designs' existing and prospective business interests with QVC and other market participants.

45. Unique Designs has suffered damage as a result of LHD's breach of the implied duty of good faith and fair dealing.

FIFTH CLAIM **(Tortious Interference)**

46. Unique Designs re-alleges and incorporates by this reference all allegations in Paragraphs 1 to 26 of its Counterclaim. Unique Designs pleads this counterclaim in the alternative to its first and second counterclaims.

47. Unique Designs has valid contractual relationships and business expectancies with its customers, including but not limited to QVC.

48. LHD knew of Unique Designs valid contractual relationships and business expectancies with Unique Designs' customers. LHD interfered with those relationships and business expectancies by communicating with Unique Designs' customers through messages and telephone calls, in which Ms. Hill harassed and pressured Unique Designs' customers to place orders for LHD products.

49. Unique Designs' contractual relationships and business expectancies with its customers were breached and/or terminated due to LHD's interference.

50. LHD had an improper purpose (to take advantage of and circumvent Unique Designs' customer relationships) and used improper means in its interference with Unique Designs' contractual relationships and business expectancies.

51. LHD's interference has caused damage to Unique Designs, including by diminishing Unique Designs' ability to place other vendors' goods with Unique Designs' customers

PRAYER FOR RELIEF

WHEREFORE, Unique Designs requests the following relief:

A. For declaratory judgment in its favor and against LHD that the Settlement Agreement is an enforceable contract and that the Settlement Agreement extinguished the rights, obligations, and claims under the Agreement;

B. For judgment in its favor and against LHD on its breach of the Settlement Agreement claim in an amount and/or a form of relief to be determined at trial;

C. Alternatively to Prayer Paragraphs A and B, for judgment in its favor and against LHD on its breach of the Agreement claim in an amount to be determined at trial;

D. Alternatively to Prayer Paragraphs A and B, for judgment in its favor and against LHD on its breach of the implied covenant of good faith and fair dealing claim in an amount to be determined at trial;

E. Alternatively to Prayer Paragraphs A and B, for judgment its favor and against LHD on its tortious interference claim in an amount to be determined at trial;

F. For an award of attorneys' fees, costs, and expenses incurred in connection with this lawsuit; and

G. For such other and further relief as this Court deems just and proper.

DATED: June 10, 2021.

ARETE LAW GROUP PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused true and correct copies of the foregoing document to be served upon the following, at the addresses stated below, via the method of service indicated:

BARRETT & GILMAN

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*Attorneys for Plaintiff/Counterclaim
Defendant Lois Hill Designs, LLC*

- Hand Delivery
- Certified Mail
- Facsimile
- E-mail
- U.S. Mail
- E-filing

Dated this 10th day of June, 2021.

/s/ Janet C. Fischer
Janet C. Fischer
Paralegal